

ARTICLE 15. NPDES GENERAL PERMIT RULE PROGRAM

Rule 1. General Provisions

327 IAC 15-1-1 Purpose

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 1. The purpose of this article is to establish NPDES general permit rules for certain classes or categories of point source discharges by prescribing the policies, procedures, and technical criteria to operate and discharge under the requirements of a NPDES general permit rule. Compliance with all requirements of applicable general permit rules may obviate the need for an individual NPDES permit issued under 327 IAC 5. A facility can operate under an individual NPDES permit and one (1) or more applicable general permit rules. *(Water Pollution Control Board; 327 IAC 15-1-1; filed Aug 31, 1992, 5:00 p.m.: 16 IR 15)*

327 IAC 15-1-2 Definitions

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3-1.5; IC 13-7-1

Sec. 2. In addition to the definitions contained in IC 13-7-1, IC 13-1-3-1.5, 327 IAC 1, and 327 IAC 5, as amended, the following definitions apply throughout this article:

- (1) "Existing discharge" means any point source discharge of process or storm water which occurs either continuously or intermittently from a property at the time coverage under an individual NPDES permit is being sought.
- (2) "General permit rule boundary" means an area based upon existing geographic or political boundaries indicating the area within which a facility affected by this article is located.
- (3) "Individual NPDES permit" means a NPDES permit issued to one (1) facility which contains requirements specific to that facility.
- (4) "Notice of intent letter" or "NOI" means a written notification indicating a person's intention to comply with the terms of a specified general permit rule in lieu of applying for an individual NPDES permit and includes information as required under 327 IAC 15-3 and the applicable general permit rule.
- (5) "Storm water" means water resulting from rain, melting or melted snow, hail, or sleet.

(Water Pollution Control Board; 327 IAC 15-1-2; filed Aug 31, 1992, 5:00 p.m.: 16 IR 15)

327 IAC 15-1-3 Department request for data

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7-1-17

Sec. 3. (a) Any person, as defined at IC 13-7-1-17, subject to this article shall:

- (1) establish and maintain such records;
- (2) make such reports;
- (3) install, use, and maintain such monitoring equipment or methods (including, where appropriate, biomonitoring methods);
- (4) sample such effluents, internal wastestreams where appropriate, or other material; and
- (5) provide such other data, including, but not limited to, raw materials, catalysts, intermediate products, byproducts, production rates, and related process information;

at such locations, at such times, and in such a manner, as the commissioner may reasonably prescribe.

(b) Sampling of internal wastestreams under subsection (a)(4) and the provisions of data under subsection (a)(5) shall not be required by the commissioner unless:

- (1) such data are reasonably expected to facilitate the identification or quantification of pollutants which may be released to the environment from facilities operated by the person to whom the request is made, and the identification or quantification of such pollutants could not reasonably be made by the commissioner in the absence of the requested information; or
- (2) such data are necessary to properly control wastewater treatment processes.

(Water Pollution Control Board; 327 IAC 15-1-3; filed Aug 31, 1992, 5:00 p.m.: 16 IR 16)

327 IAC 15-1-4 Enforcement

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 4. This article shall be enforced through the provisions of IC 13-7-10-5, IC 13-7-11, or IC 13-7-12, or any combination thereof, as appropriate. Penalties for violation of this article shall be governed by IC 13-7-13.

(Water Pollution Control Board; 327 IAC 15-1-4; filed Aug 31, 1992, 5:00 p.m.: 16 IR 16)

Rule 2. Basic NPDES General Permit Rule Requirements

327 IAC 15-2-1 Purpose and scope

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-1-4-1; IC 13-7-1-10

Sec. 1. This rule defines the basic programmatic requirements of the general permit rule program to be administered by the commissioner consistent with NPDES requirements under the Federal Act, as defined at IC 13-1-4-1, IC 13-7-1-10, and 327 IAC 5. *(Water Pollution Control Board; 327 IAC 15-2-1; filed Aug 31, 1992, 5:00 p.m.: 16 IR 16)*

327 IAC 15-2-2 NPDES general permit rule requirements

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 2. (a) The commissioner may regulate the following discharges under NPDES general permit rules:

(1) Point source discharges of storm water associated with industrial activity as defined in 40 CFR 122.26(b)(14) as published in the Federal Register on November 16, 1990.

(2) Such other categories of point sources operating within the state that:

- (A) involve the same or substantially similar types of operations;
- (B) discharge the same types of wastes;
- (C) require the same effluent limitations or operating conditions; and
- (D) require the same or similar monitoring requirements.

(b) The commissioner may determine that an individual permit must be obtained under section 9 of this rule. Any person to whom this article applies may avoid compliance with this article by obtaining an individual NPDES permit.

(c) Each general permit rule shall be applicable to persons meeting the criteria of subsection (a) existing within specific boundaries designated by the commissioner in accordance with the following:

(1) A general permit rule boundary shall correspond with existing geographic or political boundaries such as:

- (A) designated planning areas under the Federal Act;
- (B) regional sewer districts or sewer authorities;
- (C) city, county, or state political boundaries;
- (D) state highway systems;
- (E) standard metropolitan statistical areas;
- (F) urbanized areas as defined by the Bureau of Census according to the criteria in 39 FR 15202 (May 1, 1974); or
- (G) any other appropriate divisions or combinations of the boundaries in this subdivision which will encompass the sources subject to the general permit rule.

(2) Any designation of any general permit rule boundary is subject to reclassification by the commissioner:

- (A) upon revision of a general permit rule;
- (B) if individual NPDES permits have been issued to all persons in a category of point sources; or
- (C) as necessary to address water quality problems effectively.

(Water Pollution Control Board; 327 IAC 15-2-2; filed Aug 31, 1992, 5:00 p.m.: 16 IR 16; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65).

327 IAC 15-2-3 NPDES general permit rule applicability requirements

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 3. (a) A general permit rule may regulate all designated categories of point sources for which a general permit rule exists, except:

(1) as provided under section 6 or 9 of this rule or the applicable general permit rule; and

(2) point source discharges meeting the applicability requirements of a general permit rule, who are already subject to individual NPDES permits prior to the effective date of a general permit rule.

(b) Persons excluded from general permit rule regulation solely because they have an existing individual NPDES permit may request to be regulated under a general permit rule and may request that the individual NPDES permit be revoked or modified to remove the point source from the existing permit. Upon revocation or expiration of the individual NPDES permit, the general permit rule shall apply to such point source discharges regulated under this article.

(c) A person that holds an individual NPDES permit may have discharges regulated under an applicable general permit rule if such discharges are not addressed in the individual permit.

(Water Pollution Control Board; 327 IAC 15-2-3; filed Aug 31, 1992, 5:00 p.m.: 16 IR 17)

327 IAC 15-2-4 Administrative requirement for NPDES general permit rules

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 4. A general permit rule is a permit-by-rule. Therefore, the statutory requirements for administrative agency rulemaking must be satisfied in the development of a general permit rule.

(Water Pollution Control Board; 327 IAC 15-2-4; filed Aug 31, 1992, 5:00 p.m.: 16 IR 17)

327 IAC 15-2-5 Notice of intent letter

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 5. (a) Any person subject to the requirements of this article shall submit a NOI letter that complies with this section, 327 IAC 15-3, and the additional requirements in any applicable general permit rule.

(b) A NOI letter shall be submitted to the commissioner by the time specified under 327 IAC 15-3 or the time indicated in the applicable general permit rule.

(c) The person responsible for the operation of the facility from which a point source discharge of pollutants and/or storm water occurs must submit a NOI letter. *(Water Pollution Control Board; 327 IAC 15-2-5; filed Aug 31, 1992, 5:00 p.m.: 16 IR 17)*

327 IAC 15-2-6 Exclusions

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-4

Sec. 6. An individual NPDES permit issued under 327 IAC 5 is required for a discharge to a receiving stream identified as an outstanding state resource water, an exceptional use water, or an outstanding national resource water as defined under 327 IAC 2-1-2(3), 327 IAC 2-1-11(b), or 327 IAC 2-1.5-4 or which would significantly lower the water quality, as defined under 327 IAC 5-2-11.3(b)(1) of such a water downstream of the point source discharge.

(Water Pollution Control Board; 327 IAC 15-2-6; filed Aug 31, 1992, 5:00 p.m.: 16 IR 17; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1476)

327 IAC 15-2-7 Effect of general permit rule

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 7. (a) Compliance with a general permit rule constitutes compliance with all applicable standards and limitations of the Federal Act and state law.

(b) Compliance with an applicable general permit rule does not:

- (1) convey any property rights of any sort or any exclusive privileges;
- (2) authorize any injury to persons or private property or invasion of other private rights or any infringement of federal, state, or local laws or regulations; or
- (3) preempt any duty to obtain state or local assent required by law for the discharge or for construction or operation of the facility from which the discharge is made.

(Water Pollution Control Board; 327 IAC 15-2-7; filed Aug 31, 1992, 5:00 p.m.: 16 IR 17)

327 IAC 15-2-8 Nontransferability of notification requirements; time limits for individual NPDES permit application

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 4-22-2; IC 13-1-3; IC 13-7

Sec. 8. (a) Compliance with the NOI letter submission requirements under this article may not be transferred. If ownership/operation of a facility is transferred to a new person, that person must submit a NOI letter pursuant to 327 IAC 15-3 or seek coverage under an individual NPDES permit pursuant to 327 IAC 5.

(b) A person who filed a NOI letter under this article and who subsequently was requested by the commissioner to file an application for an individual NPDES permit has one hundred twenty (120) days from the time of the request by the commissioner to file the application. *(Water Pollution Control Board; 327 IAC 15-2-8; filed Aug 31, 1992, 5:00 p.m.: 16 IR 18)*

327 IAC 15-2-9 Special requirements for NPDES general permit rule

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 4-21.5; IC 13-11-2; IC 13-18-4

Sec. 9. (a) If a general permit rule is amended, all persons regulated by the affected general permit rule must be notified by first class mail of the amendment by the commissioner within sixty (60) days after the effective date of the amended rule. Those persons notified by the commissioner under this subsection shall:

- (1) apply for an individual NPDES permit under 327 IAC 5-3 within one hundred twenty (120) days after the effective date of the amended rule; or
- (2) submit a NOI letter containing the information required in 327 IAC 15-3-2 and the amended rule within ninety (90) days after the effective date of the amended rule.

(b) The commissioner may require any person either with an existing discharge subject to the requirements of this article or who is proposing a discharge that would otherwise be subject to the requirements of this article to apply for and obtain an individual NPDES permit if one (1) of the six (6) cases listed in this subsection occurs. Interested persons may petition the commissioner to take action under this subsection. Cases where individual NPDES permits may be required include the following:

- (1) The applicable requirements contained in this article are not adequate to ensure compliance with:
 - (A) water quality standards under 327 IAC 2-1 or 327 IAC 2-1.5; or
 - (B) the provisions that implement water quality standards contained in 327 IAC 5.
- (2) The person is not in compliance with the terms and conditions of the general permit rule.
- (3) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants from the point source.
- (4) Effluent limitations guidelines that are more stringent than the requirements in the general permit rule are subsequently promulgated for point sources regulated by the general permit rule.
- (5) A water quality management plan containing more stringent requirements applicable to such point source is approved.
- (6) Circumstances have changed since the activity regulated under this article began so that the discharger is no longer appropriately controlled under the general permit rule, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.

(c) If, under subsection (b), the commissioner requires an individual NPDES permit, pursuant to 327 IAC 5-3, the commissioner shall notify the person in writing that an individual NPDES permit application is required. This notice shall be issued pursuant to IC 4-21.5 and shall also include the following:

(1) A brief statement of the reasons for this decision.

(2) An application form.

(3) A statement setting a time for the person to file the application.

(4) A statement that on the effective date of the individual NPDES permit, the general permit rule, as it applies to the individual person, shall no longer apply.

The commissioner may grant additional time upon request of the applicant for completion of the application.

(d) An operator, as defined in 327 IAC 15-5-4(7), of a storm water discharge that meets the applicability requirements of the general permit rule and is not covered by an existing individual NPDES permit, must submit an application under 40 CFR 122.26 as published in the Federal Register on November 16, 1990, and 327 IAC 5-3 if the operator seeks to cover the discharge under an individual permit.

(e) On the effective date of an individual NPDES permit that is issued to a person regulated under this article, this article no longer applies to that person.

(f) Persons with a discharge meeting all the applicability criteria of more than one (1) general permit rule shall comply with all applicable general permit rules. *(Water Pollution Control Board; 327 IAC 15-2-9; filed Aug 31, 1992, 5:00 p.m.: 16 IR 18; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; errata, 16 IR 751; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1476)*

327 IAC 15-2-10 Prohibitions

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 10. No general permit rule shall be promulgated and issued where the terms and conditions of the permit rule do not comply with the applicable guidelines and requirements of the Federal Act or effective regulations promulgated under the Federal Act, 327 IAC 2, 327 IAC 5, or this article. *(Water Pollution Control Board; 327 IAC 15-2-10; filed Aug 31, 1992, 5:00 p.m.: 16 IR 18)*

Rule 3. NOI Letter Requirements

327 IAC 15-3-1 Purpose

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 1. The purpose of this rule is to establish the requirements and procedures for submitting a NOI letter under a general permit rule. The NOI letter shall be sent to the following address:

Indiana Department of Environmental Management

Office of Water Management

105 South Meridian Street

P.O. Box 6015

Indianapolis, Indiana 46206

Attention: Permits Section, General Permit Desk

.(Water Pollution Control Board; 327 IAC 15-3-1; filed Aug 31, 1992, 5:00 p.m.: 16 IR 19)

327 IAC 15-3-2 Content requirements of a NOI letter

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 2. The NOI letter shall include the following:

(1) Name, mailing address, and location of the facility for which the notification is submitted.

(2) Standard Industrial Classification (SIC) codes, as defined in 327 IAC 5, up to four (4) digits, that best represent the principal products or activities provided by the facility.

(3) The person's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity.

(4) The latitude and longitude of the approximate center of the facility to the nearest fifteen (15) seconds, or the nearest quarter

section (if the section, township, and range are provided) in which the facility is located.

(5) The name of receiving water, or, if the discharge is to a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water.

(6) A description of how the facility complies with the applicability requirements of the general permit rule.

(7) Any additional NOI letter information required by the applicable general permit rule.

(8) The NOI letter must be signed by a person meeting the signatory requirements in 327 IAC 15-4-3(g).

(Water Pollution Control Board; 327 IAC 15-3-2; filed Aug 31, 1992, 5:00 p.m.: 16 IR 19; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65)

327 IAC 15-3-3 Deadline for submittal of a NOI letter; additional requirements

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 3. (a) Any person proposing a new discharge that will be subject to a general permit rule, except for construction activity under 327 IAC 15-5, shall submit a NOI letter and additional information as required by the applicable general permit rule at least one hundred eighty (180) days before the date on which the discharge is to commence, unless permission for a later date has been granted by the commissioner or is established in the applicable general permit rule. A construction activity NOI letter shall be submitted in accordance with 327 IAC 15-5-6.

(b) Any person operating coverage under a general permit rule with an existing discharge shall submit a NOI letter within ninety (90) days of the effective date of the applicable general permit rule, unless permission for a later date has been granted by the commissioner or is established in the applicable general permit rule. *(Water Pollution Control Board; 327 IAC 15-3-3; filed Aug 31, 1992, 5:00 p.m.: 16 IR 19; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; errata, 16 IR 898)*

327 IAC 15-3-4 Procedures for exemption from an individual NPDES permit

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 4. Except as provided for in the applicable general permit rule, the following apply:

(1) A person with an existing NPDES permit will be exempt from the requirement of that permit when he submits the applicable NOI letter and complies with all other applicable requirements of this article.

(2) A person with a new facility to which this article applies must comply with all applicable requirements of this article including the submittal of the appropriate NOI letter.

(Water Pollution Control Board; 327 IAC 15-3-4; filed Aug 31, 1992, 5:00 p.m.: 16 IR 19)

Rule 4. Standard Conditions for NPDES General Permit Rules

327 IAC 15-4-1 General conditions

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-1-6; IC 13-7-13-3

Sec. 1. (a) The conditions in this section apply to all NPDES general permit rules.

(b) Any violation of this article constitutes a violation of the Federal Act and the Indiana Environmental Management Act and is grounds for enforcement action and/or requirement to obtain an individual NPDES permit.

(c) Under the Indiana Environmental Management Act at IC 13-7-13-3, any person who violates "any rule or standard adopted by one (1) of the boards" is subject to a civil penalty not to exceed twenty-five thousand dollars (\$25,000) per day of such violation. Any person who willfully or negligently violates "any rule or standard adopted by one (1) of the boards" is subject to a fine of not less than two thousand five hundred dollars (\$2,500) nor more than twenty-five thousand dollars (\$25,000) per day of violation, or by imprisonment for not more than one (1) year, or both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be a fine of not more than fifty thousand dollars (\$50,000) per day of violation, or by imprisonment for not more than two (2) years, or both. Except as provided in applicable general permit rule

conditions on bypassing under section 2(c) of this rule, and upsets under section 2(d) of this rule, nothing in this article shall be construed to relieve persons in violation of it from civil or criminal penalties for noncompliance.

(d) Persons in violation of this article shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from their noncompliance.

(e) Persons regulated by this article shall furnish to the commissioner, within a reasonable time, any information which the commissioner may request to determine whether cause exists for revoking and reapproving or terminating the approval to discharge under this article or to determine compliance with this article. Those persons shall also furnish to the commissioner, upon request, copies of records required to be kept by this article.

(f) Notwithstanding the provisions of 327 IAC 15-2-9, if a toxic effluent standard, prohibition, or sediment, wet weather, or biological criteria (including any schedule of compliance specified in such effluent standard or prohibition) is established under the Federal Act for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in an applicable general permit rule, the rule shall be modified to conform to the toxic effluent standard or prohibition. The person shall comply with effluent standards or prohibitions established under the Federal Act for toxic pollutants injurious to human health within the time provided in the regulations that establish those standards or prohibitions, even if the rule has not yet been modified to incorporate the requirement.

(g) When cyanide or cyanogen compounds are used in any of the processes at a facility regulated under this article, the person responsible for that facility shall provide approved facilities for the containment of any losses of these compounds in accordance with the requirements under 327 IAC 2-2-1.

(h) Persons regulated by this article shall have all wastewater treatment facilities, if any, under the direct supervision of an operator certified by the commissioner as required under IC 13-1-6 and 327 IAC 8-12.

(i) Nothing in this article shall be construed to relieve anyone from any responsibility, liability, or penalty to which they are or may be subject to under the Federal Act.

(j) The applicability of this article does not convey any property rights of any sort or any exclusive privileges.

(k) The provisions of this article are severable and, if any provision of this article or the application of any provision of this article to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this article shall not be affected thereby.

(l) Persons regulated by this article shall allow the commissioner, or an authorized representative, (including an authorized contractor or representative of another governmental agency acting as a representative on behalf of the commissioner), at reasonable times, and in a manner to minimize disruption of the business, upon the presentation of credentials and such other documents as may be required by law, to:

- (1) enter upon the premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this article;
- (2) have access to and copy, at reasonable times, any records that must be kept under the conditions of this article;
- (3) inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this article; and
- (4) sample or monitor, at reasonable times, for the purposes of assuring compliance with the applicable general permit rule conditions or as otherwise authorized by the Federal Act, any substances or parameters at any location.

(m) Persons regulated by this article shall not construct, install, or modify any water pollution control facility without a valid construction permit issued by the Indiana department of environmental management under 327 IAC 3-2. (*Water Pollution Control Board; 327 IAC 15-4-1; filed Aug 31, 1992, 5:00 p.m.: 16 IR 19; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; errata, 16 IR 751; errata, 16 IR 898*)

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1
Affected: IC 13-1-3; IC 13-7

Sec. 2. (a) Persons regulated by this article shall, at all times, maintain in good working order and efficiently operate all facilities and systems (and related appurtenances) for collection and treatment which are installed or used by the person and which are necessary for achieving compliance with the terms and conditions of this article.

(b) The following definitions, with regard to bypass of treatment facilities, apply throughout this rule:

(1) "Bypass" means the intentional diversion of a wastestream from any portion of a treatment facility normally utilized for treatment of the wastestream.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production at the facility.

(c) Bypass which causes, or is likely to cause, applicable effluent limitations to be exceeded is prohibited unless the following conditions are met:

(1) Bypass is unavoidable to prevent loss of life, personal injury, or severe property damage.

(2) There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal period of equipment downtime.

(3) The person submits notice of an unanticipated bypass to the commissioner within twenty-four (24) hours of becoming aware of the bypass. (If this information is provided orally, a written submission must be provided within five (5) days.) Where the person knows, or should have known, in advance of the need for a bypass, this prior notification shall be submitted for approval to the commissioner, if possible, at least ten (10) days before the date of the bypass.

An anticipated bypass which meets the criteria under this subsection may be allowed under conditions determined to be necessary by the commissioner to minimize any adverse effects.

(d) With regard to upset conditions, as used in this rule, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with the requirements of the applicable general permit rule because of factors beyond the reasonable control of the responsible person. An upset does not include noncompliance to the extent caused by any of the following:

(1) Operational error.

(2) Improperly designed treatment facilities.

(3) Inadequate treatment facilities.

(4) Lack of preventive maintenance.

(5) Careless or improper operation.

(e) An upset shall constitute an affirmative defense to an action brought for noncompliance with such effluent limitations if the requirements under subsection (d) are met.

(f) A person regulated under this article who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence, the following:

(1) An upset occurred and the regulated person has identified the specific cause of the upset, if possible.

(2) The facility was, at the time being operated, in compliance with proper operation and maintenance procedures.

(3) The regulated person complied with any remedial measures required under section 1(d) of this rule.

(g) Solids, sludges, filter backwash, or other pollutants removed from or resulting from treatment or control of waters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters and to be in compliance with all Indiana statutes and rules relative to liquid and/or solid waste disposal. (*Water Pollution Control Board; 327 IAC 15-4-2; filed Aug 31, 1992, 5:00 p.m.: 16 IR 21*)

327 IAC 15-4-3 Reporting requirements

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7-13-3; IC 35-50-3-3

Sec. 3. (a) Any change in the information submitted in the NOI letter should be reported as soon as practicable to the commissioner. Changes which are reasonably expected to alter the characteristics of the discharge regulated under a general permit rule must be reported prior to the change. Following such notice, the commissioner may request the person to submit an application for an individual NPDES permit.

(b) Monitoring results shall be reported at the intervals and in the form specified in the appropriate general permit rule.

(c) The following are requirements for twenty-four (24) hour reporting:

(1) Persons regulated by this article shall orally report information to the office of enforcement at (317) 232-8603 on the following types of noncompliance within one (1) business day from the time the person becomes aware of such noncompliance:

(A) Any unanticipated bypass which exceeds any effluent limitation in the applicable general permit rule.

(B) Violation of a maximum daily discharge limitation for any of the pollutants listed by the commissioner in the rule to be reported within one (1) business day.

(C) Any noncompliance which may pose a significant danger to human health or the environment.

(2) A written submission shall also be provided to the office of enforcement within five (5) business days of the time the person becomes aware of the circumstances. The written submission shall contain the following:

(A) A description of the noncompliance and its cause.

(B) The period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue.

(C) Steps taken or planned to reduce and eliminate the noncompliance and prevent its recurrence.

The commissioner may waive the written report on a case-by-case basis if the oral report has been received within one (1) business day.

(d) Persons regulated under this article shall report any instance of noncompliance not reported under subsection (c) at the time the pertinent discharge monitoring report is submitted. The report shall contain the information specified under subsection (c)(2).

(e) Where the person becomes aware that he failed to submit any relevant facts, or submitted incorrect information in a NOI letter, or in any report to the commissioner, the person shall promptly submit such facts or corrected information.

(f) Persons regulated under this article shall notify the commissioner as soon as they know, or have reason to believe, the following:

(1) That any activity has occurred, or will occur, which would result in the discharge of any pollutant identified as toxic, under the Federal Act which is not limited in the applicable general permit rule, if that discharge will exceed the highest of the following notification levels:

(A) One hundred (100) micrograms per liter.

(B) Two hundred (200) micrograms per liter for acrolein and acrylonitrile; five hundred (500) micrograms per liter for 2,4-dinitrophenol and 2-methyl-4,6-dinitrophenol; and one (1) milligram per liter for antimony.

(C) A level established elsewhere in the rule by the commissioner.

(2) That it has begun, or expects to begin, to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the NOI letter.

(g) Signatory requirements shall be as follows:

(1) All reports required by this article and other information requested by the commissioner shall be signed by a person described as follows, or by a duly authorized representative of that person:

(A) For a corporation, by a responsible corporate officer. As used in this section, "responsible corporate officer" means:

(i) a president, secretary, treasurer, any vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation; or

(ii) the manager of one (1) or more manufacturing, production, or operating facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000) (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(B) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively.

(C) For a municipality, state, federal, or other public agency or political subdivision thereof, by either a principal executive

officer or ranking elected official.

(2) A person is a duly authorized representative only if:

(A) the authorization is made in writing by a person described under subdivision (1);

(B) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(C) the written authorization is submitted to the commissioner.

(3) Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(h) Except for data determined to be confidential under 327 IAC 12, all reports prepared in accordance with the terms of the applicable general permit rule shall be available for public inspection at the offices of the Indiana department of environmental management and the U.S. Environmental Protection Agency Regional Administrator. As required by the Federal Act, information contained in the NOI letter and effluent data shall not be considered confidential.

(i) The Indiana Environmental Management Act at IC 13-7-13-3(b) provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under the applicable general permit rule, including monitoring reports or reports of compliance or noncompliance, shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000) per violation, or by imprisonment for not more than six (6) months per violation, or by both. The Federal Act, as well as IC 13-7-13-3 and IC 35-50-3-3, provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000) per violation, or by imprisonment for not more than one hundred eighty (180) days per violation, or by both. (*Water Pollution Control Board; 327 IAC 15-4-3; filed Aug 31, 1992, 5:00 p.m.: 16 IR 21*)